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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re C.M. et al., Persons Coming  
Under the Juvenile Court Law.

D061337

SAN DIEGO HEALTH AND HUMAN  
SERVICES AGENCY,

(Super. Ct. No. SJ12691A/B)

Plaintiff and Respondent

v.

CHRISTIAN M., SR.,

Defendant and Appellant,

APPEAL from orders of the Superior Court of San Diego County, Garry G.

Haehnle, Judge. Orders affirmed.

A father challenges jurisdictional orders entered by the juvenile dependency court on the ground that the orders are not supported by substantial evidence. He also contends

a restraining order issued by the juvenile court in favor of the mother lacked an adequate basis. We reject his contentions and affirm the orders.

### FACTUAL AND PROCEDURAL BACKGROUND

Christian M., Sr. and R.M. are the parents of 10-year-old C.M. and 6-year-old G.M. (together the children). The parents are divorcing, with R.M. having primary custody of the children and Christian having visitation every other weekend and every Thursday after school.

On December 16, 2011, the County of San Diego Health and Human Services Agency (the Agency) filed a petition alleging C.M. fell under the jurisdiction of the juvenile court based on allegations of physical abuse by Christian. (Welf. & Inst. Code, § 300, subd. (a), all further section references are to this code.) The petition alleged that Christian had slapped C.M. in the face resulting in a dime or nickel-size bruise to the corner of C.M.'s left eye, that C.M. was afraid of Christian and did not feel safe in Christian's home. The Agency filed a sibling petition on behalf of G.M. alleging he fell under the jurisdiction of the juvenile court based on the physical abuse suffered by C.M. (§ 300, subd. (j).)

The juvenile court detained the children with R.M., found there was initial evidence sufficient to remove the children from Christian and granted him supervised visitation. The court also issued a temporary restraining order (TRO) against Christian prohibiting him from having contact with R.M. and the children other than as provided by court-ordered visitation. Christian did not contest the requested TRO.

At the jurisdictional and dispositional hearing in January 2012, the juvenile court received the Agency's reports into evidence, found the petitions true, and declared the children dependents of the court. The court placed the children with R.M. and ordered family maintenance services for her. The court ordered the Agency to provide Christian with services and granted the social worker discretion to lift the supervision requirement for Christian's visitation and to allow overnight and weekend visits. Over Christian's objections, the juvenile court continued the TRO and ordered that it expire on January 14, 2014. Christian timely appealed.

## DISCUSSION

### *I. Jurisdictional Orders*

Christian asserts there is insufficient evidence to support the section 300, subdivision (a) and (j) allegations because there is no evidence that he ever inflicted serious physical harm on C.M., or that either child was at risk of serious physical harm in the future. Christian concedes that he slapped C.M. leaving a bruise near C.M.'s eye, but argues the injury did not constitute "serious physical harm" and could not support the determination that the children were at risk of such harm in the future. Viewing the record most favorably to the judgment, as we must, there is substantial evidence to sustain the petitions.

To sustain a petition under section 300, subdivision (a), the dependency court must find that "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian." The juvenile court is entitled to determine, on a case by case basis, what

constitutes serious physical harm. (*In re Mariah T.* (2008) 159 Cal.App.4th 428, 438.) A minor need not have been actually harmed for the court to assume jurisdiction. (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 598.)

A court may find there is a substantial risk of serious future injury based on: (1) the manner in which a less serious injury was inflicted; (2) a history of repeated inflictions of injuries on the child or the child's siblings; or (3) a combination of these and other actions by the parent or guardian that indicate the child is at risk of serious physical harm. (§ 300, subd. (a).) The juvenile court must be able to find the allegations of the petition to be true by a preponderance of the evidence. (§ 355, subd. (a).)

The Agency bears the burden of proving by a preponderance of the evidence that a minor comes under the juvenile court's jurisdiction. (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.) We review challenges to the sufficiency of the evidence in support of the juvenile court's jurisdictional and dispositional findings under the substantial evidence standard of review. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) We do not reweigh the evidence, evaluate the credibility of witnesses or resolve evidentiary conflicts. The appellant has the burden to demonstrate there is no evidence of a sufficiently substantial nature to support the findings or orders. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) "If there is any substantial evidence, contradicted or uncontradicted, which will support the judgment, we must affirm." (*In re Tracy Z.* (1987) 195 Cal.App.3d 107, 113.)

The evidence revealed that Christian began hitting C.M. in the face because C.M. lied about his homework. This incident left a bruise near the corner of C.M.'s eye. C.M.

stated that when he misbehaved, Christian would hit and slap him on the face, forehead, and shoulder. C.M. did not feel safe in Christian's home, was afraid of Christian and did not want to stay with Christian because he was afraid. G.M. told a social worker that when he misbehaved, Christian would hit him with a belt and his hand, and kick him. G.M. cried a lot because it hurt and claimed that Christian's actions left marks. G.M. also did not feel safe in Christian's home and was scared of Christian. G.M. stated that Christian would slap and kick C.M. and that they both cried a lot when they stayed with Christian.

R.M. observed the bruise near C.M.'s eye and took him to the doctor. She also reported that about a year ago, Christian slapped G.M.'s leg so hard it left a hand print. She provided a social worker with a picture of the injury. R.M. claimed that when she attempted to discuss this excessive discipline with Christian, that Christian retaliated by disciplining the children more severely. R.M. stated that she divorced Christian because of a long history of domestic violence. During one incident, R.M. claimed that she fought back after Christian attacked her and that she was arrested.

Christian initially denied slapping C.M. in the face and claimed that C.M. was lying. When asked about the incident 11 months later, Christian claimed he did not want to call C.M. a liar, that he did not know what to say about the allegations and could not remember what happened. When shown a picture of C.M.'s bruise, Christian did not know what to say and claimed that C.M. had a birthmark on that part of his eye that might look like a bruise. Christian admitted that he used physical punishment on the children if they ignored his verbal warnings, but denied using objects to discipline the

children. When initially asked about his willingness to attend parenting and anger management classes, Christian responded that this was a " 'bad' " idea and stated his method of discipline was not a problem. While Christian later indicated a willingness to participate in services so that he could continue to have a relationship with his children, at the time of the jurisdiction and disposition report the social worker continued to believe that Christian's visits needed to be supervised given his "lack of insight and level of denial."

Although Christian contends his children suffered no serious physical harm, the juvenile court need not wait for a child to be seriously injured and may base its jurisdictional decision on the manner in which less serious injuries were inflicted. (§ 300, subd. (a); *In re Heather A.*, *supra*, 52 Cal.App.4th at pp. 194-195.) Here, the juvenile court could reasonably conclude that Christian's act of hitting a young child in the face and head risked causing the child serious harm and was not appropriate discipline. Moreover, the evidence supported a finding that Christian has a history of physical violence against the children and R.M., and that the children were afraid of Christian. This evidence, combined with Christian's belief that his method of discipline was appropriate and lack of interest in parenting and anger management classes, could reasonably lead the juvenile court to conclude that the severity of discipline might escalate. Because a substantial risk existed that Christian would physically injure C.M. in the future, jurisdiction was warranted under section 300, subdivision (a). The juvenile court could also reasonably infer from the totality of the evidence that G.M. faced a substantial risk of harm. (§ 300, subd. (j).)

## II. TRO

Christian asserts the evidence was insufficient to support the issuance of a TRO ordering him to stay away and prohibiting him from having contact with R.M. and the children. (§ 213.5.) We disagree.

As a threshold matter, although the children were protected under the initial TRO issued by the juvenile court, they are not listed as persons protected under the order at issue in this appeal. Accordingly, there is no need for us to address Christian's claims that the TRO was not required to protect the children.

The juvenile court may enjoin "any person from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning," contacting, coming within a specified distance of, or disturbing the peace of any child or parent. (§ 213.5, subd. (a).) "Proof may be by the application and any attachments, additional declarations or documentary evidence, the contents of the juvenile court file, testimony, or any combination of these." (Cal. Rules of Court, rule 5.630(f)(1).) As the applicant for the restraining order, R.M. had the burden of proving the facts necessary to her request for relief by a preponderance of the evidence. (Evid. Code, §§ 115, 500.)

We review a decision to grant or deny a restraining order for an abuse of discretion. (*Salazar v. Eastin* (1995) 9 Cal.4th 836, 850.) " 'The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.' [Citations.]" (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) If the juvenile court's factual findings are

supported by substantial evidence, we will not find its decision on an application for a restraining order to be an abuse of discretion. (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1512.)

The trial court ordered the TRO against Christian as to R.M. based on the history of domestic violence between the couple. Christian asserts the juvenile court erred because there was not an adequate basis to conclude that he posed an imminent threat to either R.M. or the children or that a restraining order was necessary to prevent future harm.

Here, R.M. claimed that Christian was abusive during their entire marriage and that the abuse progressed from yelling to " 'man-handling' " until he punched her. Christian, however, denied any serious bouts of domestic violence in his relationship with R.M. The couple has one documented domestic violence incident that occurred in 2006. R.M. claimed that Christian attacked her, that she fought back and was arrested. Christian asserted that he touched R.M. in self-defense after she slapped him and confirmed that R.M. was arrested after the incident.

The jurisdiction and disposition report noted that Christian "minimized the severity of his discipline style toward" his children and recommended that Christian not be allowed contact with R.M. based on his lack of insight and level of denial. At the jurisdiction and disposition hearing, R.M.'s counsel argued to the juvenile court that R.M. required a TRO because R.M. was fearful of reporting Christian's threats, that he had previously threatened to call the police on her in retaliation and that the existence of the TRO would protect her if she required law enforcement assistance in the future.



This evidence, combined with the statements of the children that they were afraid of Christian, constituted substantial evidence from which the juvenile court could have reasonably concluded that R.M. had carried her burden of proving by a preponderance of the evidence that she entertained a reasonable apprehension of future abusive conduct. We reject Christian's assertion that R.M. was required to show that he posed an imminent threat to her or that a restraining order was necessary to prevent future harm. Section 213.5 includes "contacting" or "disturbing the peace," neither of which necessarily involves violent behavior or the threat of violence. (§ 213.5, subd. (a).) On this record, we cannot conclude that the juvenile court abused its discretion in granting the restraining order on behalf of R.M.

#### DISPOSITION

The orders are affirmed.

McINTYRE, Acting P. J.

WE CONCUR:

O'ROURKE, J.

IRION, J.